



CITY OF SAN DIEGO

MEMORANDUM

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JUN 22 2009

COUNCILMEMBER
DONNA FRYE

DATE: June 22, 2009

TO: Honorable Mayor Jerry Sanders

FROM: Councilmember Ben Hueso, Council President
Councilmember Anthony Young, Chair Budget & Finance Committee
Councilmember Donna Frye, Chair Natural Resources & Culture Committee

SUBJECT: Managed Competition Implementation Ordinance

As you know, when the Council approved the FY2010 Budget we also approved recommendations for fiscal reforms to be pursued by the Mayor and Council during the upcoming fiscal year. Included in those reforms is the completion of "processes necessary to allow managed competition decisions to move forward." We are writing to reaffirm our commitment to ensuring that when the managed competition implementation ordinance is presented to us for consideration, that it has the following elements that the City Council voted for on July 28, 2008 (please see attachments).

These elements are as follows:

1. "The independent contractor does not receive an advantage for a bid proposal that would reduce costs by not making an employer-sponsored health insurance plan available to the workers who are to be employed in the performance of that activity or function under the contract; or

Offering to such workers an employer-sponsored health benefits plan that requires the employer to contribute less towards the premium or subscription share than the amount that is paid by the city for its employees, unless notwithstanding; the lower contribution, the independent contractor can demonstrate that health benefits under its employer-sponsored health benefits plan are substantially similar to the health benefits provided under the employer-sponsored health benefits plan offered by the city;

2. The impact of contracting on city employees will be minimized by requiring contractors, to the extent permitted by law and the particular circumstances of the service, to give first preference in hiring to displaced city employees;

3. That the ordinance amend the service work retention ordinance (Chapter 2, Article 2, Division 28) such that the same level of protection which applies to employees that work for a terminated contractor, applies to city employees that lose a bid in managed competition as well as to employees that work for a terminated contractor who lost the bid in managed competition;

4) The City Manager will transmit the preliminary statement of work and the accompanying report to the City Council at the same time that it is submitted to the Independent Review Board at least two weeks prior to the City Council hearing..."

Thank you for your assistance and cooperation as we begin fiscal year 2010 and move forward on recommendations and strategies to continue making our city a better place to live, work, and raise a family.

Cc: Jan Goldsmith, City Attorney
Andrea Tevlin, Independent Budget Analyst

PREVIOUS COUNCIL AND/OR COMMITTEE ACTION:

On March 26, 2008, the Budget & Finance Committee voted unanimously to adopt and support the IBA's recommendations to amend the BPR Ordinance as identified in IBA Report No. 08-25 and refer to the full City Council.

On June 18, 2008, the Budget & Finance Committee voted unanimously to support and forward IBA Report No. 08-65 which provided an earlier update on our discussions to the full City Council.

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS: N/A

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Discussions with stakeholders included representatives from the Mayor's Office, Councilmember Atkins' office, City Attorney's Office, Labor, Center for Policy Initiatives (CPI), the Managed Competition Independent Review Board (MCIRB) and the Office of the Independent Budget Analyst.

Celaya/Tevlin

FILE LOCATION: NONE

COUNCIL ACTION: (Time duration: 4:36 p.m. – 7:00 p.m.)

MOTION BY ATKINS TO INTRODUCE SUBITEMS A AND B AS AMENDED TO APPROVE IBA RECOMMENDATIONS FOR ORDINANCE (O-2009-11) AMENDING CHAPTER 2, ARTICLE 2, DIVISION 37 WITH THE FOLLOWING AMENDMENTS: 1) AMEND SECTION 22.3713 (A) OF THE MANAGED COMPETITION ORDINANCE TO ADD THE FOLLOWING: (5) THE INDEPENDENT CONTRACTOR DOES NOT RECEIVE AN ADVANTAGE FOR A BID PROPOSAL THAT WOULD REDUCE COSTS BY (A) NOT MAKING AN EMPLOYER-SPONSORED HEALTH INSURANCE PLAN AVAILABLE TO THE WORKERS WHO ARE TO BE EMPLOYED IN THE PERFORMANCE OF THAT ACTIVITY OR FUNCTION UNDER THE CONTRACT; OR (B) OFFERING TO SUCH WORKERS AN EMPLOYER-SPONSORED HEALTH BENEFITS PLAN THAT REQUIRES THE EMPLOYER-SPONSORED HEALTH BENEFITS PLAN THAT REQUIRES THE EMPLOYER TO CONTRIBUTE LESS TOWARDS THE PREMIUM OR SUBSCRIPTION SHARE THAN THE AMOUNT THAT IS PAID BY THE CITY FOR ITS EMPLOYEES, UNLESS NOTWITHSTANDING; THE LOWER CONTRIBUTION, THE INDEPENDENT CONTRACTOR CAN DEMONSTRATE

THAT HEALTH BENEFITS UNDER ITS EMPLOYER-SPONSORED HEALTH BENEFITS PLAN ARE SUBSTANTIALLY SIMILAR TO THE HEALTH BENEFITS PROVIDED UNDER THE EMPLOYER-SPONSORED HEALTH BENEFITS PLAN OFFERED BY THE CITY;

2) AMEND SECTION 22.3715 OF THE MANAGED COMPETITION ORDINANCE TO ADD THE FOLLOWING: (C) THE IMPACT OF CONTRACTING ON CITY EMPLOYEES WILL BE MINIMIZED BY REQUIRING CONTRACTORS, TO THE EXTENT PERMITTED BY LAW AND THE PARTICULAR CIRCUMSTANCES OF THE SERVICE, TO GIVE FIRST PREFERENCE IN HIRING TO DISPLACED CITY EMPLOYEES;

3) DIRECT THE CITY ATTORNEY TO PREPARE AN ORDINANCE AND RETURN TO CITY COUNCIL IN 45 DAYS, AMENDING THE SERVICE WORK RETENTION ORDINANCE (CHAPTER 2, ARTICLE 2, DIVISION 28) SUCH THAT THE SAME LEVEL OF PROTECTION, WHICH APPLIES TO EMPLOYEES THAT WORK FOR A TERMINATED CONTRACTOR APPLIES TO CITY EMPLOYEES THAT LOSE A BID IN MANAGED COMPETITION AS WELL AS TO EMPLOYEES THAT WORK FOR A TERMINATED CONTRACTOR WHO LOST THE BID IN MANAGED COMPETITION;

4) AMEND SECTION 22.3702 (B) IN THE IBA RECOMMENDATION TO READ:(B) THE CITY MANAGER WILL TRANSMIT THE PRELIMINARY STATEMENT OF WORK AND THE ACCOMPANYING REPORT TO THE CITY COUNCIL AT THE SAME TIME THAT IT IS SUBMITTED TO THE INDEPENDENT REVIEW BOARD AT LEAST TWO WEEKS PRIOR TO THE CITY COUNCIL HEARING;

5) THE CITY ATTORNEY WILL COME BACK WITH RECOMMENDATIONS ABOUT THE APPROPRIATE DISCLOSURE REQUIREMENTS FOR PRIVATE INTERESTS THAT OBTAIN CONTRACTS THROUGH MANAGED COMPETITION AND THE ENFORCEMENT MECHANISMS. Second by Frye. Passed by the following vote: Peters-yea, Faulconer-yea, Atkins-yea, Young-yea, Maienschein-yea, Frye-yea, Madaffer-nay, Hueso-yea.